

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JENNIFER MAITRE, Individually  
and as Mother, Guardian and Next Friend  
of CHRISTIAN FRANCIS MAITRE, a Minor

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

Civil Action No. 05-CV-10442 (JLT)

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Plaintiffs Christian Maitre and Jennifer Maitre oppose Defendant's Motion for Summary Judgment on the grounds that:

- (1.) There exist genuine issues of fact as to whether it was foreseeable, by a major drug manufacturer, in 1963, that DES could malform the uterus of an exposed daughter and thereby cause the premature expulsion of her child with resultant injury.
- (2.) Massachusetts has adopted recovery for a preconception tort and recognizes a duty of ordinary care to unborn plaintiffs.
- (3.) Defendant Lilly's brand of DES was more likely than not the product involved, and that, had the Defendant properly tested and warned of the risk of DES, Christian Maitre would have avoided his brain damage due to premature birth, and
- (4.) The decisions Defendant argues that preclude preconception tort in DES cases (the Enright, Grover, Sparapany, Loerch and Angelini cases) have either been overruled or are temporally or factually distinguishable from this case.

WHEREFORE, Plaintiffs respectfully request that the Court deny Defendant's Motion for Summary Judgment.

**REQUEST FOR HEARING**

Pursuant to LR 7.1(D), Plaintiffs request an oral hearing on Defendant's Motion for Summary Judgment.

Respectfully submitted,

JENNIFER MAITRE and CHRISTIAN MAITRE  
by their attorneys,

/s/ Erica Tennyson  
Juliet A. Davison (BBO #562289)  
Erica Tennyson (BBO #660707)  
TODD & WELD LLP  
28 State Street, 31st Floor  
Boston, Massachusetts 02109  
(617) 720-2626  
etennyson@toddweld.com

and

/s/ Aaron M. Levine  
Aaron M. Levine, #7864  
AARON M. LEVINE & ASSOCIATES  
1320 19th Street, N.W., Suite 500  
Washington, D.C. 20036

Dated: July 28, 2006

CERTIFICATE OF SERVICE

I, Erica Tennyson, hereby certify that this Opposition to Defendant's Motion for Summary Judgment, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on July 28, 2006.

/s/ Erica Tennyson  
Erica Tennyson